REMARKS

Claims 1-15 and 20-33 are pending in the application.

Claims 1-14 and 20-32 have been rejected.

Claims 15 and 33 have been objected to.

Claims 1, 2 and 20 have been amended, as set forth herein.

I. REJECTIONS UNDER 35 U.S.C. § 103

Claims 1 and 20 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Constantin (US Patent No. 6,198,725) in view of Daniel (US Patent No. 5,726,985).

Claim 2 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Constantin (US Patent No. 6,198,725) in view of Daniel (US Patent No. 5,726,985) and Thorson (US Patent No. 4,440,986).

Claims 3, 6-8, 21 and 24-26 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Constantin (US Patent No. 6,198,725) in view of Daniel (US Patent No. 5,726,985) and further in view of Yamato (US Patent No. 5,694,390).

Claims 4-5 and 22-23 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Constantin (US Patent No. 6,198,725) in view of Daniel (US Patent No. 5,726,985) and further in view of Campbell (US Patent 2003/0140159).

Claims 9-13 and 27-31 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Constantin (US Patent No. 6,198,725) in view of Daniel (US Patent No. 5,726,985) and Yamato (US Patent No. 5,694,390) in further view of Geagan III (US Patent No. 6,263,371).

Claims 14 and 32 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Constantin (US Patent No. 6,198,725) in view of Daniel (US Patent No. 5,726,985) and Yamato (US Patent No. 5,694,390) and Geagan (US Patent No. 6,263,371) and in further view of Thorson (US Patent No. 4,440,98).

The rejections are respectfully traversed.

In *ex parte* examination of patent applications, the Patent Office bears the burden of establishing a *prima facie* case of obviousness. MPEP § 2142; *In re Fritch*, 972 F.2d 1260, 1262, 23 U.S.P.Q.2d 1780, 1783 (Fed. Cir. 1992). The initial burden of establishing a *prima facie* basis to deny patentability to a claimed invention is always upon the Patent Office. MPEP § 2142; *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Piasecki*, 745 F.2d 1468, 1472, 223 U.S.P.Q. 785, 788 (Fed. Cir. 1984). Only when a *prima facie* case of obviousness is established does the burden shift to the applicant to produce evidence of nonobviousness. MPEP § 2142; *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). If the Patent Office does not produce a *prima facie* case of unpatentability, then without more the applicant is entitled to grant of a patent. *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Grabiak*, 769 F.2d 729, 733, 226 U.S.P.Q. 870, 873 (Fed. Cir. 1985).

A *prima facie* case of obviousness is established when the teachings of the prior art itself suggest the claimed subject matter to a person of ordinary skill in the art. *In re Bell*, 991 F.2d 781, 783, 26 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1993). To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed invention and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. MPEP § 2142.

Constantin allocates resources along a path through a network in response to a connection request message. Constantin, Abstract. In general terms, using cell delay calculations, if each successive resource element in the prospective path meets the delay budget, that resource element and path are utilized for the connection; if not, other paths are explored. See Constantin, generally. Thus, Constantin teaches, generally, determining and finding a path through a plurality of resource elements that meets the required delay budget.

Applicant has amended independent Claims 1, 2 and 20 to recite (1) enabling optimization includes reducing the size of voice packets transported in the network (amended Claim 1), (2) adjusting the bandwidth includes reducing the size of voice packets transported in the PBX network (amended Claim 2), and (3) optimizing the bandwidth includes reducing the size of voice packets

transported in the network. Support for these amendments may be found in the Specification, page 12, lines 14-16. Constantin does not disclose, teach or suggest reducing the size of voice packets transported in the network for bandwidth optimization. None of the other cited references appear to disclose, teach or suggest reducing the size of voice packets transported in the network when the measured parameter (a parameter of a data packet measured after the data packet is transported across the network) differs from a predetermined value.

Accordingly, the Applicant respectfully requests withdrawal of the § 103(a) rejections of Claims 1-15 and 20-33.

II. CONCLUSION

As a result of the foregoing, the Applicant asserts that the remaining Claims in the Application are in condition for allowance, and respectfully requests an early allowance of such Claims.

If any issues arise, or if the Examiner has any suggestions for expediting allowance of this Application, the Applicant respectfully invites the Examiner to contact the undersigned at the telephone number indicated below or at ***rmccutcheon@munckbutrus.com***.

The Commissioner is hereby authorized to charge any additional fees connected with this communication or credit any overpayment to Munck Butrus Deposit Account No. 50-0208.

Respectfully submitted,

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